

## **FOREST CROP AND MANAGED FOREST LAWS**

### **A. INTRODUCTION**

The Forest Crop and Managed Forest Laws extend special property tax treatment to owners of qualifying forest land. The Forest Crop Law was enacted in 1927 as a means of promoting private forestry in the state. The law was closed to new entrants when the Managed Forest Law went into effect in 1986.

### **B. HISTORICAL BACKGROUND**

In the early 1900s, Wisconsin was a major timber producer. By the 1920s, most of the state's valuable timber had either been cut or damaged by fire. Many owners of forestland hoped to sell their land for farming, but a major decline in farm commodity prices led to depression conditions in agriculture and little demand for additional farmland. The poor land market led many forestland owners to quit paying their property taxes. Since no one offered to redeem these lands at tax sales, counties ended up owing more and more forestland. Because this land was now county-owned, it became tax-exempt and taxes on the remaining taxable land increased. The result was a fiscal crisis for local governments.

For forestland owners, the problem was simple. While farmers pay their taxes from the proceeds of annual crops, forestland owners pay their taxes from the proceeds of a crop that may not be harvested for many years. It was thought that easing the burden of annual taxes on forestland owners might prevent forestland being abandoned and, perhaps, encourage reforestation. Local governments, however, were not willing to forgo the taxes they could collect on forestland.

A compromise was found, but it required that the uniformity in taxation clause of the state constitution be amended to create an exception for forestland. This amendment was approved by voters in 1927. Later that year, the Forest Crop Law (FCL) was enacted. A program similar to the FCL for owners of small forest plots, the Woodland Tax Law (WTL), was enacted in 1954. The Managed Forest Law (MFL) program was enacted in 1985 to replace the FCL and WTL. These programs are discussed below.

### **C. FOREST CROP LAW**

Under the FCL, an owner of a complete quarter-quarter section (typically 40 acres) in a town or village could petition the Department of Natural Resources (DNR) to enroll that land in the program. In order for the land to be enrolled, the DNR had to determine that forestry was the best use for the land and that a stand of merchantable timber could be produced on it in a reasonable period of time. Enrollment was by contract between the DNR and the landowner for a period of 25 or 50 years, at the owner's option. The contract required to owner to practice forestry, to notify the DNR of timber harvests, to allow state appraisals of harvests, and to permit public access for hunting and recreation.

Land enrolled under the FCL is exempt from property taxes. In lieu of taxes, owners are required to make several types of payment, discussed below:

- (1) Acreage Share. Landowners are required to make an annual payment to the municipality in which the land is located. The municipality retains 80% of the payment and remits 20% to the county. The payment is as follows: \$0.10 per acre for land entered before 1972, \$0.20 per acre for "special provision" land entered from 1949 to 1963 that was not within DNR fire control boundaries, and for land entered after 1972, a per acre amount recalculated every 10 years. From 2004 to 2013 the payment for land entered after 1972 is \$1.66 per acre; this payment equals \$0.20 multiplied by the ratio of aggregate land value in the state in the year of recalculation to aggregate land value in the state in 1972. The ratio for the current payment is calculated as follows:

$$\frac{\text{Aggregate Land Value in the State in 2002}}{\text{Aggregate Land Value in the State in 1972}} = \frac{\$87,508,935,500}{\$10,544,826,600} = 8.2988$$

- (2) State Contribution. DNR annually pays the municipality 20 cents per acre of FCL land within its jurisdiction. The municipality keeps 80% of this payment and remits 20% to the county.
- (3) Severance Tax. Annually, DNR establishes values for various types of timber harvested across the state. These values are used to calculate the value of timber harvested from FCL land. The severance tax is 10% of the value of the timber harvested (no severance tax is assessed on harvests from "special provision" lands). From the proceeds, the DNR keeps an amount equal to the payments it has made to the municipality on that FCL parcel. Any excess is paid to the municipality, which keeps 80% and remits 20% to the county.
- (4) Withdrawal Tax. Land can be withdrawn from the FCL at the owner's option or, if the owner violates the contract, under DNR order. In either case, a withdrawal tax is due. The tax equals the sum, for every year the contract was in effect, of the difference between the amount of real estate taxes that would have been levied on the land and the acreage shares and severance taxes actually paid. In addition, each year's difference is subject to simple (not compound) interest at 12% per year (5% for pre-1977 contracts) for each year the real estate tax was effectively deferred. From the proceeds, DNR keeps an amount equal to the total payments it has made to the municipality on that parcel. Any excess is paid to the municipality, which keeps 80% and remits 20% to the county.
- (5) Termination Tax. When a contract expires and the land is not enrolled under the MFL, a termination tax of 10% of the value of the standing timber is assessed. From the proceeds, the DNR keeps an amount equal to the total payments it has made to the municipality on that parcel. Any excess is paid to the municipality, which keeps 80% of the payment and remits 20% to the county.

With enactment of the MFL program in 1985, the FCL was closed to new land entries as of January 1, 1986. Because FCL contracts can be for up to 50 years, the last FCL contracts will expire in 2035.

## **D. MANAGED FOREST LAW**

An owner of 10 or more contiguous forest acres may apply for entry into the MFL program. As of April 28, 2004, the land can be in any municipality (previously, the land could not be in a city). In order for the land to be enrolled, the DNR must determine that at least 80% of the parcel is capable of producing at least 20 cubic feet of merchantable timber per acre per year and that the land is not developed in a way incompatible with the practice of forestry. Enrollment is by contract between the DNR and the landowner for a period of 25 or 50 years, at the owner's option. The contract requires the owner to follow a forest management plan. Owners must also permit public access for hunting and recreation. However, up to 160 acres can be closed to public access (of which no more than 80 acres can be on land for which MFL orders took effect before April 28, 2004) by paying an annual closure fee.

Land enrolled under the MFL is exempt from property taxes. In lieu of taxes, owners are required to make several types of payment:

- (1) **Acreage Share.** Land owners are required to make annual payments to the municipality where the land is located. For orders that took effect before April 28, 2004, the payment for 2004 to 2008 is \$0.83 per acre. For orders that take effect on or after April 28, 2004, the payment for 2005 to 2008 will be \$1.46 per acre. The \$0.83 rate equals the original payment (\$0.74 per acre) multiplied by the ratio of the statewide average per acre tax on open-space land (agriculture, swamp and waste, and forest) in 2002 divided by the corresponding amount for 1986. The \$1.46 per acre equals the statewide average equalized value per assessed acre of taxable forest land in 2003 (\$1,455) multiplied by the net statewide tax rate for 2003/04 (20.0105 mills) multiplied by 5%. Both rates are recalculated every 5 years, with the next recalculation in 2007 effective for payments in 2009. The municipality keeps 80% of acreage share payments and remits 20% to the county.
- (2) **Closure Fee.** Paid annually to the municipality where the land is located, this fee is \$1.12 per acre for 2004 to 2008 for MFL orders that took effect before April 28, 2004, and \$5.82 per acre for 2005 to 2008 for MFL orders that took effect after on or after April 28, 2004. The \$1.12 rate equals the original payment (\$1.00 per acre) multiplied by the same ratio used to calculate acreage shares. The \$5.82 per acre rate equals the statewide average equalized value per assessed acre of taxable forest land in 2003 (\$1,455) multiplied by the net statewide tax rate for 2003/04 (20.0105 mills) multiplied by 20%. Both rates are recalculated every 5 years, in the same manner as acreage share payments are recalculated. The closure fee is in addition to the acreage share payment. The municipality remits the entire payment to the DNR, which deposits the proceeds in the state Conservation Fund.
- (3) **State Contribution.** DNR annually pays the municipality 20 cents per year for each MFL acre. The municipality keeps 80% and shares 20% with the county.
- (4) **Yield Tax.** When timber on MFL land is harvested, a yield (severance) tax is imposed equal to 5% of the value of the timber harvest. Yield taxes are assessed by and collected by DNR. Except for FCL conversions, no yield tax is due during the first 5 years for land under an MFL order that took effect on or after April 28, 2004. Beginning on July 1, 2004, the DNR remits 100% of yield tax collections to the

municipality where the timber was harvested. (Previously, DNR retained 50% of the yield tax.) The municipality keeps 80% of the payment and remits 20% to the county.

- (5) Non-compliance Fee. The fee, set at \$250, took effect on April 28, 2004, and is imposed on the landowner by the DNR if it determines that the landowner has not complied with the management plan. The municipality where the land is located is notified of the fee, and the fee is payable to that municipality. The municipality keeps 80% of the fee and remits 20% to the county.
- (6) Withdrawal Fee. Effective April 28, 2004, the DNR will assess a fee of \$300 on all withdrawals from the MFL program that occur before the expiration of the MFL contract period. DNR retains the entire fee.
- (7) Withdrawal Tax. If land is withdrawn from the MFL during an initial order, this tax is the greater of:
  - (a) the net tax rate (on assessed values) in the year prior to withdrawal multiplied by the assessed value of the land in the year prior to withdrawal multiplied by the number of years the land was in the MFL program, less any acreage share and yield taxes paid on the land, or
  - (b) 5% of the value of the merchantable timber on the land.

If land is withdrawn on a renewed order, the calculation under (a) above is made from the year of the renewal. Beginning on July 1, 2004, DNR remits 100% of any withdrawal taxes to the municipality where the land is located. (Previously, the DNR retained 50% of the tax.) The municipality keeps 80% of the payment and remits 20% to the county.

- (8) Contract Expiration. When a contract expires and is not renewed, the land becomes subject to the property tax.

## **E. WOODLAND TAX LAW**

Previously, the state had the Woodland Tax Law (WTL), enacted in 1954, to permit owners of small forest parcels to reduce their annual property tax burdens. Under this program, the owner of a forest parcel of at least 10 acres that was too small to qualify for entry under the FCL could petition the DNR to enroll that land in the program. In order for the land to be enrolled, the DNR had to determine that the land was suitable for growing timber and that forestry was the best use for the land. The landowner signed a 15-year contract with the DNR to follow a forest management program. WTL contracts did not require the enrolled land to be open for hunting and fishing.

Land enrolled under the WTL was exempt from property taxes. In lieu of taxes, owners were required to make acreage share and withdrawal penalty payments; there was no state contribution, severance tax or termination tax under the WTL program. With enactment of the MFL program in 1985, the WTL was closed to new land entries as of January 1, 1986. Because WTL contracts were for 15 years, the last WTL contracts expired in 2000.

## F. PARTICIPATION IN FORESTRY PROGRAMS

Table 1 shows the number of acres enrolled under the various forest tax law programs and the average property tax on taxable forest land for selected years from 1960 to the present.

TABLE 2  
ACRES ENROLLED AND AVERAGE PROPERTY TAX ON FOREST LAND, 1960 - 2003

Year	Acres Enrolled				Average Property Tax per Acre of Taxable Forest Land
	Woodland Tax Law	Forest Crop Law	Managed Forest Law	Total Acres Enrolled	
1960	60,431	361,211	0	421,642	0.52
1965	107,431	490,154	0	597,585	0.56
1970	154,185	643,514	0	797,699	0.87
1975	158,302	951,808	0	1,110,110	1.42
1980	256,349	1,287,833	0	1,544,182	3.31
1985	447,851	1,468,912	0	1,916,763	5.90
1990	472,236	1,452,194	372,102	2,296,532	6.87
1995	302,338	1,406,718	804,269	2,513,325	7.76
2000	55,507	471,727	1,971,474	2,498,708	12.90
2001	0	447,613	2,079,062	2,526,735	15.73
2002	0	428,790	2,231,154	2,659,944	17.96
2003	0	400,716	2,417,023	2,817,739	20.65

Sources: Acreage: (1960 to 1985) Wisconsin Department of Natural Resources, Forestry Tax Unit; (1990 to 2003) Wisconsin Department of Revenue, Division of State and Local Finance. Tax per Acre: Wisconsin Department of Revenue, Division of Research and Policy

Despite recent increases in enrollment, only about 28% of the state's 10 million acres of forest land in private ownership are enrolled under the FCL and MFL. While some of the 72% of forest land not entered into the program is not being used to grow a commercial timber crop, much of it likely is being so used. It is not clear why those owners have not enrolled their land under the programs given the substantial reduction in taxes they would experience by doing so.